

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MORGAN LEE MITZNER,)
)
Petitioner,)
)
v.) Case No. CIV-13-1131-R
)
WARDEN, JCCC, et al., etc.,)
)
)
Respondent.)

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, has brought this action pursuant to 28 U.S.C. § 2254 seeking a writ of habeas corpus. United States District Judge David L. Russell referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the undersigned has promptly examined the petition and recommends that the action be transferred to the United States District Court for the Northern District of Oklahoma.

Petitioner challenges his convictions in the Delaware County District Court in Case Nos. CF-2009-252B, CF-2009-253C. Doc. 1, at 1. Delaware County is located in the Northern District of Oklahoma. 28 U.S.C. § 116(a). Petitioner is presently incarcerated in Alfalfa County's James Crabtree

Correctional Center, located within the Western District of Oklahoma. 28 U.S.C. § 116(c). Under these circumstances, both the Northern and Western Districts of Oklahoma have jurisdiction to entertain the habeas petition. 28 U.S.C. § 2241(d).

When two courts share jurisdiction, the district court wherein the habeas petition is filed may “exercise . . . its discretion and in the furtherance of justice may transfer the application to the other district court for hearing and determination.” *Id.* The undersigned finds that justice warrants transfer to the Northern District of Oklahoma since that is the district wherein the convictions were obtained and where the trial court officials and records are located. In the event that a hearing is necessary, prosecutors and any necessary witnesses are also ostensibly available in that district. Accordingly, the undersigned recommends that the case be transferred to the United States District Court for the Northern District of Oklahoma for all further proceedings.

NOTICE OF RIGHT TO OBJECT

Petitioner is advised that he has the right to file an objection to this report and recommendation with the Clerk of this Court on or before the 19th day of November, 2013, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Petitioner is further advised that failure to make timely objection to this

report and recommendation waives the right to appellate review of both the factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). This report and recommendation disposes of all issues referred to the undersigned Magistrate Judge in the above captioned matter.

ENTERED this 30th day of October, 2013.



SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE